IN THE MISSOURI SUPREME COURT

APPEAL NO. SC92520

CHARZETTA STEELE

Plaintiff/Appellant,

vs.

SHELTER MUTUAL INSURANCE COMPANY

Defendant/Respondent.

TRANSFERRED FROM THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
APPEAL NO. ED96625
FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
DIVISION 13
CAUSE NO.: 10SL-CC04046
Honorable Barbara W. Wallace

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

Respondent Shelter Mutual Insurance Company (hereinafter "Shelter") adds the following pertinent facts to those set forth in Appellant's Substitute Brief.

On November 3, 2009, Justin Steele was a passenger in a 2000 Ford van owned by Bright Start Academy when the van was involved in a motor vehicle accident. *Amended Legal File (hereinafter "L.F.") 4, 10-11*. Shelter issued an automobile policy of insurance, Policy No. 24-1-6331759-8, to Bright Start Academy that was in force and effect on the day of the accident, subject to its terms and conditions. *L.F. 11*.

The Shelter policy issued to Bright Start Academy included uninsured motorist coverage, defining those individuals insured under the policy for purposes of such coverage. As is pertinent to this lawsuit, the policy defined an insured as:

> CATEGORY B:
>
> Any **individual**, not included in Category A, who is **using** the **described auto** with **permission** or **general consent**….
>
> *L.F. 11-12, 49-50 (bold in original).*

The Shelter policy further defined the term "use" as follows:

> **Use** means physically controlling, or attempting to physically control, the movements of a vehicle. It includes any emergency repairs performed in the course of a trip, if those repairs are necessary to the continued **use** of the vehicle.

L.F. 12, 36 (bold in original).

Justin Steele was neither a named insured nor an additional listed insured under the policy of insurance issued by Shelter to Bright Start Academy. *L.F. 12-13, 22.* He was not driving the van at the time of the accident, nor was he physically controlling or attempting to physically control the van. *L.F. 13, 19.* Instead, Justin Steele was merely a passenger in the van at the time of the accident. *L.F. 13, 19.*

On March 31, 2011, the trial court entered its Order and Judgment granting Shelter's Motion for Summary Judgment, which was premised upon the fact that Justin Steele was not an insured under the uninsured motorist provisions of the policy. Appellant filed a Notice of Appeal in the Missouri Court of Appeals, Eastern District, on April 12, 2011. Thereafter, the Missouri Court of Appeals, Eastern District, affirmed the trial court's grant of summary judgment in its Order filed on March 20, 2012. Appellant's Motion for Rehearing and Application for Transfer to the Supreme Court was filed on March 28, 2012 and denied on April 26, 2012. Appellant subsequently filed an Application for Transfer to the Supreme Court on May 2, 2012, which this honorable court sustained on August 14, 2012.

POINTS RELIED ON

I. THE TRIAL COURT DID NOT ERR IN ENTERING SUMMARY JUDGMENT FOR SHELTER BECAUSE THE FACT THAT ITS POLICY DOES NOT PROVIDE UNINSURED MOTORIST COVERAGE FOR INJURIES ALLEGEDLY SUSTAINED BY A PASSENGER DOES NOT CONFLICT WITH THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW (MVFRL) IN THAT THE MVFRL DOES NOT REQUIRE UNINSURED MOTORIST COVERAGE FOR PERSONS WHO ARE ONLY OCCUPANTS OF A MOTOR VEHICLE.

A. Standard of Review.

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Lindell Trust Company v. Lieberman, 824 S.W.2d 358 (Mo. Ct. App. 1992)

Windsor Insurance Company v. Lucas, 24 S.W.3d 151 (Mo. Ct. App. 2000)

B. Justin Steele is not an insured under the uninsured motorist provisions of the Shelter policy.

Cameron Mutual Insurance Company v. Woods, 88 S.W.3d 896 (Mo. Ct. App. 2002)

Melton v. Country Mutual Insurance Company, 75 S.W.3d 321 (Mo. Ct. App. 2002)

C. Missouri's MVFRL does not mandate that uninsured motorist coverage be provided to passengers such as Justin Steele.

Byers v. Shelter Mutual Insurance Company, 271 S.W.3d 39 (Mo. Ct. App. 2008)

Hines v. Government Employees Insurance Company, 656 S.W.2d 262 (Mo. banc 1983)

Marchand v. Safeco Insurance Company of America, 2 S.W.3d 826 (Mo. Ct. App. 1999)

D. The arguments and authority relied upon by Appellant are not persuasive.

Melton v. Country Mutual Insurance Company, 75 S.W.3d 321 (Mo. Ct. App. 2002)

Reaves v. Farm Bureau, Town & Country Insurance Company of Missouri, 706 S.W.2d 911 (Mo. Ct. App. 1986)

State Farm Mutual Automobile Insurance Company v. Carney, 861 S.W.2d 665 (Mo. Ct. App. 1993)

Waltz v. Cameron Mutual Insurance Company 526 S.W.2d 340 (Mo. Ct. App. 1975)

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN ENTERING SUMMARY JUDGMENT FOR SHELTER BECAUSE THE FACT THAT ITS POLICY DOES NOT PROVIDE UNINSURED MOTORIST COVERAGE FOR INJURIES ALLEGEDLY SUSTAINED BY A PASSENGER DOES NOT CONFLICT WITH THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW (MVFRL) IN THAT THE MVFRL DOES NOT REQUIRE UNINSURED MOTORIST COVERAGE FOR PERSONS WHO ARE ONLY OCCUPANTS OF A MOTOR VEHICLE.

A. Standard of Review.

In considering an appeal from summary judgment, an appellate court reviews the record essentially de novo. James v. Paul, 49 S.W.3d 678, 682 (Mo. 2001). The propriety of summary judgment is purely an issue of law. Id. The ruling of the trial court will be upheld on appeal if no genuine issues of material fact exist and the movant is entitled to judgment as a matter of law. Id.

Summary judgment is designed to permit the trial court to enter judgment, without delay, where the moving party has demonstrated on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. 1993). Summary judgment is appropriate if there is no dispute as to material facts and the movant is entitled to judgment as a matter of law. Mo. Sup. Ct. Rule 74.04. A "genuine issue" is a dispute that is real, not merely argumentative, imaginary

or frivolous. ITT, 854 S.W.2d at 382. The interpretation and meaning of an insurance policy is a question of law. Windsor Insurance Company v. Lucas, 24 S.W.3d 151, 153 (Mo. Ct. App. 2000). Summary judgment is a matter of law and is not discretionary. Lindell Trust Company v. Lieberman, 824 S.W.2d 358 (Mo. Ct. App. 1992). Summary judgment is an entitlement under applicable law when no factual dispute exists and the movant is entitled to judgment as a matter of law. Id. Further, the burden is on the party appealing the trial court's order granting summary judgment to demonstrate error. Bickerson, Inc. v. American States Insurance Company, 898 S.W.2d 595, 600 (Mo. Ct. App. 1995).

B. Justin Steele is not an insured under the uninsured motorist provisions of the Shelter policy.

The insurance policy under which Appellant seeks uninsured motorist coverage specifically defines those persons insured thereunder as follows:

> PART IV – COVERAGE E – **UNINSURED MOTOR VEHICLE** LIABILITY COVERAGE
>
> In Coverage E:
>
> (2) **Insured** means a **person** included in one of the following categories, but only to the extent stated in that category.
>
> CATEGORY A:
>
> (a) **You**;
>
> (b) **relatives**; and

> (c) **individuals** listed in the **Declarations** as an "additional listed insured" who do not **own** a **motor vehicle**, and whose **spouse** does not **own** a **motor vehicle**.
>
> CATEGORY B:
>
> Any **individual**, not included in Category A, who is **using** the **described auto** with **permission** or **general consent**. The limit of **our** liability for **individuals** in this category is the minimum limit of uninsured motorist insurance coverage specified by the **uninsured motorist insurance law** or **financial responsibility law** applicable to the **accident**, regardless of the limit stated in the **Declarations**.
>
> *L.F. 11-12, 49-50 (bold in original).*

In addition, the Shelter policy contains the following pertinent definition:

> **Use** means physically controlling, or attempting to physically control, the movements of a vehicle. It includes any emergency repairs performed in the course of a trip, if those repairs are necessary to the continued **use** of the vehicle.
>
> *L.F. 12, 36 (bold in original).*

It is not disputed that Justin Steele was not listed as a named insured under the Shelter policy, nor is it disputed that he was not an additional listed insured under the

policy issued to Bright Start Academy. Accordingly, Justin Steele was clearly not an insured under Category A of the uninsured motorist provisions of the Shelter policy.

Further, Justin Steele was not an insured under Category B of that portion of the policy defining an insured for purposes of uninsured motorist coverage. As set forth above, Category B defines an insured as any individual "using" the automobile insured under the policy. The term "use" is specifically and plainly defined to mean "physically controlling, or attempting to physically control, the movements of a vehicle. It includes any emergency repairs performed in the course of a trip, if those repairs are necessary to the continued **use** of the vehicle." *L.F. 12, 36 (bold in original).*

Justin Steele was a passenger in the Bright Start Academy van and was not physically controlling, or attempting to physically control, the vehicle. Indeed, as much is not in dispute. *L.F. 13, 19.* Moreover, there is no dispute that Justin Steele had not performed repairs on the van. *L.F. 14, 20.* Accordingly, pursuant to the clear and unambiguous terms, conditions, and definitions of the uninsured motorist coverage in the Shelter policy, Justin Steele was not using the van at the time of the accident and, therefore, is not insured under that coverage.

As the party seeking coverage under the policy, Appellant bears the burden of proving by substantial evidence that the claim sued upon is within coverage of the insurance contract. See, Cameron Mutual Insurance Company v. Woods, 88 S.W.3d 896, 900 (Mo. Ct. App. 2002). Missouri law is clear that language in an insurance contract should be given its plain meaning. See, Melton v. Country Mutual Insurance

Company, 75 S.W.3d 321, 324 (Mo. Ct. App. 2002). Where no ambiguities exist, an insurance policy will be enforced according to its terms absent a statute or public policy requiring coverage. Id.

The facts are clear and undisputed that Justin Steele is not an insured under the uninsured motorist provisions of the Shelter policy issued to Bright Start Academy and, accordingly, the trial court's entry of summary judgment in favor of Shelter should be affirmed.

C. Missouri's MVFRL does not mandate that uninsured motorist coverage be provided to passengers such as Justin Steele.

Appellant's argument of error is premised upon Missouri's MVFRL in general and Mo. Rev. Stat. § 379.203[1], in particular. Accordingly, a review of the statute specifically addressing uninsured motorist coverage is appropriate. The statute reads, in pertinent part:

> **379.203. Automobile liability policy, required provisions – uninsured motorist coverage required – recovery against tortfeasor, how limited**
>
> 1. **No automobile liability insurance covering liability** arising out of the ownership, maintenance, or use of any motor vehicle **shall be delivered or issued** for delivery in this state with respect to any motor vehicle registered or principally garaged in this state **unless**

[1] All statutory references are to RSMo. 2000.

> **coverage is provided therein** or supplemental thereto, … in not less than the limits for bodily injury or death set forth in section 303.030, RSMo, **for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles** because of bodily injury, sickness or disease, including death, resulting therefrom….

(emphasis supplied). Missouri's uninsured motorist statute clearly, by its terms, requires that no liability policy be issued unless uninsured motorist coverage is provided *for those persons who are insured under the liability portion of the policy*. Here, the Shelter policy issued to Bright Start Academy provides uninsured motorist coverage to those persons insured for purposes of liability coverage. The analysis, frankly, should end here in that there is a specific statute that addresses the mandate of uninsured motorist coverage, and that statute imposes no obligation on the part of Shelter to provide uninsured motorist coverage to Justin Steele.

While Appellant seemingly acknowledges that Missouri's uninsured motorist statute does not require uninsured motorist coverage for passengers of motor vehicles, she nonetheless proposes to ignore the statute in arguing that uninsured motorist coverage is required for Justin Steele under the Shelter policy. Specifically, Appellant contends that the MVFRL requires uninsured motorist coverage for passengers, but in so doing, notes principles of statutory construction, to wit:

> The rules of statutory interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result. Instead, the canons of statutory interpretation are considerations made in a genuine effort to determine what the legislature intended. This Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.

Howard v. City of Kansas City, 332 S.W.3d 772, 787 (Mo. 2011). The clear language of Missouri's uninsured motorist statute is that uninsured motorist coverage must be provided for those persons insured under the liability portion of the policy. Accordingly, Shelter respectfully submits that this Court should give the statute its intended effect.

Nonetheless, Appellant argues that the MVFRL requires that uninsured motorist coverage be provided to all persons occupying an insured motor vehicle. However, Missouri courts have spoken on the issue and held to the contrary. See, Byers v. Shelter Mutual Insurance Company, 271 S.W.3d 39, 40-41 (Mo. Ct. App. 2008). As noted by the Court of Appeals for the Eastern District of Missouri in Marchand v. Safeco Insurance Company of America, 2 S.W.3d 826, 830 (Mo. Ct. App. 1999), "[t]he MVFRL applies only to owners and operators of motor vehicles. As such, Safeco is not required to afford Marchand, a passenger, uninsured motorist coverage." Id. at 830. Similarly, here, Shelter is not required to provide uninsured motorist

coverage to Justin Steele, who was neither an owner nor an operator of the Bright Start Academy van. Missouri's uninsured motorist statute, which Appellant urges this Court to ignore, specifically speaks to the Missouri legislature's mandate of uninsured motorist coverage, and the statute does not mandate such coverage to Justin Steele, who was simply a passenger and not insured under the liability portion of the Shelter policy.

Not only does Appellant urge this Court to ignore Missouri's uninsured motorist statute, she further proposes to gloss over the decision of Byers v. Shelter Mutual Insurance Company, supra. However, Byers specifically speaks to the issue presented in this appeal. In Byers, the Court of Appeals for the Western District of Missouri held that Shelter's "policy provision **does not violate the public policy of the Motor Vehicle Safety Responsibility Law**, section 303.010 et seq., RSMo 2000 **or the Uninsured Motorist Statute**, Section 379.203, RSMo 2000." Id. at 39 (emphasis supplied). Byers involved an appeal from the grant of summary judgment in favor of Shelter in a claim for uninsured motorist benefits. The plaintiff was injured as a passenger in a vehicle operated by a Shelter insured. Id. On appeal, the plaintiff acknowledged that she was not an insured under the uninsured motorist provisions of the Shelter policy since the policy defined an insured as an individual "using" the vehicle. Id. at 40. Instead, the plaintiff argued that Shelter was not permitted to define the term "use" so as to frustrate the public policy of Missouri. Id.

The court quoted the Supreme Court of Missouri's decision in Hines v. Government Employees Insurance Company, 656 S.W.2d 262 (Mo. banc 1983), as

follows: "The law does not even require that policies provide uninsured motorist coverage for occupants." Id. at 40. Accordingly, the court held that Shelter was permitted to define the term "use" and, as such, concluded that the plaintiff was not an insured for purposes of uninsured motorist coverage, thereby affirming the trial court's grant of summary judgment in favor of Shelter. The plaintiff's application for transfer to the Supreme Court of Missouri was denied.

Appellant urges this Court to ignore Byers, boldly asserting that the Byers court "chose to skirt any real analysis of the issues relevant to its decision" and relied upon law decided prior to the passage of the MVFRL, namely the Supreme Court of Missouri's decision in Hines. It should be noted that the plaintiff in Byers likewise argued that Hines was outdated, but the Byers court properly rejected the plaintiff's argument. Id. at 40-41. Nonetheless, a review of the Byers decision clearly shows that the court considered Mo. Rev. Stat. §§ 303.010 (the MVFRL) and 379.203 (Missouri's uninsured motorist statute), as well as judicial precedent in finding that the Shelter policy did not afford uninsured motorist coverage to the plaintiff passenger and was not violative of Missouri's MVFRL law.

Shelter urges this Court to likewise conclude that the policy it issued to Bright Start Academy does not afford uninsured motorist coverage to Justin Steele and complies with Missouri's MVFRL and its uninsured motorist statute. Significantly, although Appellant asks this Court to reject Byers, as well as the clear language of Missouri's uninsured motorist statute specifically addressing the mandate of uninsured motorist coverage, and those principles enunciated by the courts in Hines and

Marchand, she cites to absolutely no authority supportive of her proposition that uninsured motorist coverage must be provided to passengers of a motor vehicle.

D. The arguments and authority relied upon by Appellant are not persuasive.

Instead of citing case law in support of her proposition that uninsured motorist coverage must extend to all occupants of a motor vehicle, Appellant argues that the MVFRL requires *liability* coverage for passengers; thus, uninsured motorist coverage follows. Of course, this ignores the fact that there are separate statutes governing the mandates applicable to the respective coverages and that Mo. Rev. Stat. § 379.203 does not require that uninsured motorist coverage extend to passengers. Nonetheless, courts have consistently held that the MVFRL does not require liability coverage to extend to all occupants of a vehicle, and Appellant cites to no authority whatsoever that stands for the proposition that the public policy of the MVFRL mandates liability coverage for passengers. Instead, Appellant's proposition is based upon her own bare assertion that such coverage is mandated to passengers.

In fact, Appellant cites Francis-Newell v. Prudential Insurance Company of America, 841 S.W.2d 340 (Mo. Ct. App. 1992) in support of the notion that a passenger uses a vehicle for purposes of uninsured motorist coverage. However, quite significantly, the court in Francis-Newell affirmed the longstanding principle that the term "use" as applied to liability coverage requires the exercise of control over the vehicle, to wit:

> The conclusion that liability coverage for a person's "use" of a motor vehicle extended only to persons having or exercising supervisory control over a vehicle **is consistent with the nature of liability coverage** – coverage for damages inflicted upon a third party's property or person as a result of an accident involving the insured motor vehicle.

Francis-Newell, 841 S.W.2d at 814 (emphasis supplied). That is, the court in Francis-Newell noted and affirmed the principle that liability coverage only extends to those persons exercising control over a vehicle. This principle was again affirmed in State Farm Mutual Automobile Insurance Company v. Carney, 861 S.W.2d 665 (Mo. Ct. App. 1993), where the court quoted with approval the above passage from Francis-Newell. Carney, 861 S.W.2d at 667, *overruled on other grounds by* State Farm Mutual Automobile Insurance Company v. Ballmer, 899 S.W.2d 523 (Mo. 1995). Further, as noted in Marchand, "[t]he MVFRL applies only to owners and operators of motor vehicles." Marchand, 2 S.W.3d at 830.

Appellant suggests that while portions of the Francis-Newell decision should be considered in support of her proposition that uninsured motorist coverage be extended to all passengers, the portion of the decision unfavorable to her position should be disregarded. Appellant appears to suggest that the potential scope of liability for passengers extends beyond supervisory control of the vehicle and then takes an enormous leap to suggest that liability coverage must necessarily follow to all

passengers. While it may be true that potential liability might exist as to passengers in limited circumstances (none of which apply to this action where the passenger is the party making a claim for damages), the fact that a passenger may be *liable* under certain circumstances is not the same as saying that a passenger is an insured for purposes of liability coverage under a particular policy of insurance.

The notion of potential liability under certain circumstances does alter the scope of the MVFRL as it has been consistently interpreted by Missouri courts over the years. Interestingly, Appellant cites to Manley v. Horton, 414 S.W.2d 254 (Mo. 1967) for the proposition that a passenger can be liable on a joint venture theory. She then seemingly extrapolates that since a passenger could potentially be liable under such a theory, liability coverage for passengers is mandated. That is, Appellant suggests that while it has been recognized for at least 50 years that a passenger may be held liable under certain legal theories, Missouri courts have consistently disregarded this notion when repeatedly affirming the principle that the MVFRL does not extend liability coverage to passengers of vehicles. However, Appellant is conflating the notion of a passenger's potential *liability* under certain circumstances with an insurer's obligation to provide liability coverage to all occupants of a motor vehicle.

Missouri courts have consistently, over the past several decades, held that the MVFRL does not extend liability coverage to occupants of a vehicle. See, e.g., Waltz v. Cameron Mutual Insurance Company, 526 S.W.2d 340, 344 (Mo. Ct. App. 1975); Reaves v. Farm Bureau, Town & Country Insurance Company of Missouri, 706 S.W.2d 911, 913 (Mo. Ct. App. 1986); Francis-Newell, 841 S.W.2d 340, 814 (Mo.

Ct. App. 1992); Carney, 861 S.W.2d 665, 667 (Mo. Ct. App. 1993). Appellant's proposition that liability coverage must extend to every individual who touches a vehicle and is conceivably liable to another is not only inconsistent with decades of precedent, it is simply not required under the MVFRL. Simply put, nothing in the language contained in Mo. Rev. Stat. § 303.190 mandates liability coverage for all occupants of a motor vehicle.

While Appellant cites no authority in support of her proposition, she dismisses Hines, Waltz, the portions of Francis-Newell adverse to her position, Carney, and the like by asserting that the reasoning applied in those decisions was based upon "pre-1987 (sic) law." Citing Mo. Rev. Stat. § 303.190.2(2), Appellant asserts that, "The MVFRL, adopted by the General Assembly in 1987 (sic), provides that all owner's policies of insurance (the relevant type of policy here) 'shall insure the person named therein, and any other person, as insured, using any such motor vehicle….'" Appellant's Substitute Brief at 8. Appellant seemingly implies that Mo. Rev. Stat. § 303.190.2(2) was adopted during the 1986 amendments. This implication is incorrect in that the statutory provision was in effect well before 1986, apparently dating back to 1965, and was left unchanged by the 1986 amendments to Missouri's insurance laws.

The 1986 amendments made liability insurance compulsory, but it did not alter the language of Mo. Rev. Stat. § 303.190.2(2), which has consistently required that if an owner's policy is issued in Missouri, that policy must provide liability coverage insuring those persons named in the policy as well as individuals using the described

motor vehicle. This mandate has been interpreted by courts since its enactment in 1965, and courts have consistently held that the section only extends liability coverage to those individuals operating the vehicle – i.e. exercising control over the vehicle. See, e.g., Waltz; Reaves; Francis-Newell; Carney. To suggest that the 1986 amendments in any way changed the scope or mandate of Mo. Rev. Stat. § 303.190.2(2) is simply without any support in law.

In her Substitute Brief, Appellant inquires, "If the MVFRL meant 'operating' instead of 'using,' why did it not use that term?" Appellant's Substitute Brief at 11. The better question is, if the legislature meant to expansively mandate liability coverage for all "passengers" or "occupants" of motor vehicles, why did it not use *those* terms? Certainly, the legislature had the opportunity to specifically include occupants within the purview of Mo. Rev. Stat. § 303.190.2(2) when it implemented the 1986 amendments to the MVFRL and, had the legislature desired to include occupants, it would have had every reason to amend the statute given Missouri courts' consistent interpretation of the statute as applying to those individuals operating a vehicle – to the exclusion of passengers. Instead, Appellant simply seeks to give an unintended meaning to the statute – a meaning that has never been ascribed despite consideration by Missouri courts over the past several decades.

Although Appellant ignores Byers and Hines, both of which are directly on point with the issue presented, she cites Francis-Newell for the proposition that Missouri courts have broadly interpreted the term "use" to mean any individual traveling in a motor vehicle regardless of whether or not that individual was operating

the vehicle. However, as the court in Francis-Newell acknowledged, the insurance policy at issue did not define the term "use" and, therefore, the term was open to interpretation. In contrast, the Shelter policy issued to Bright Start Academy specifically defined "use," which definition excludes Justin Steele. Although Appellant provides this Court with various definitions of "use" in her brief, such definitions are only pertinent when the policy language is ambiguous. See, Melton v. Country Mutual Insurance Company, supra (where the court held that where no ambiguities exist, an insurance policy will be enforced according to its terms). The general rule in Missouri is that definitions in an insurance policy are controlling as to the terms used within the policy. Bowan, ex rel. Bowan v. General Sec. Indemn. Company of Arizona, 174 S.W.3d 1, 6 (Mo. Ct. App. 2005). If a term is defined in an insurance policy, the court will look to that definition and nowhere else. Hrebec v. Aetna Life Insurance Company, 603 S.W.2d 666, 671 (Mo. Ct. App. 1980). Here, Appellant does not contend that Shelter's definition of the term "use" is ambiguous, and no such argument could be seriously entertained. Accordingly, the policy's definition of "use" should be enforced and the definitions proposed by Appellant are not relevant.

Appellant concludes her Substitute Brief with a short discussion of the statement in Marchand that the MVFRL applies only to owners and operators of motor vehicles. Appellant argues that this statement of law is incorrect for various reasons. First, Appellant suggests that American Standard Insurance Company v. Dolphin, 801 S.W.2d 413 (Mo. Ct. App. 1990) is in some way applicable to the analysis and

conflicts with Marchand. Again, the Marchand court stated that the MVFRL only applies to owners and operators of a motor vehicle. In Dolphin, the court held that a passenger exclusion in a liability policy (not uninsured motorist coverage) was unenforceable insofar as it could not be applied to avoid liability coverage to the *operator* of the motorcycle. Dolphin, 801 S.W.2d at 416. The plaintiff in Dolphin was a passenger on a motorcycle and sued the operator of the vehicle. Id. at 414. Acknowledging the mandate of the MVFRL, the court held that *operators* must be afforded liability coverage such that the passenger exclusion was invalid as applied to the *driver* of the motorcycle in an injury claim filed against him by the passenger. The Dolphin decision does nothing to support Appellant's proposition that liability coverage, and thus uninsured motorist coverage, extends to passengers and any suggestion to that effect is simply disingenuous. Indeed, as the Byers court noted, Dolphin is clearly distinguishable from the circumstances at issue in this appeal. Byers, 271 S.W.3d at 40.

Appellant further suggests that this Court has disagreed with the statement in Marchand concerning the scope of the MVFRL and cites State Farm Mutual Automobile Insurance Company v. Ballmer, 899 S.W.2d 523 (Mo. 1995) in support. As with Dolphin, Ballmer reaffirms the principle that liability coverage is mandatory, up to the statutory minimum, for *operators* of motor vehicles. Specifically, the court held that *operators* must be provided liability coverage such that a household exclusion could not apply to avoid liability coverage for the *driver* of the vehicle in which a household passenger was injured. Ballmer, 899 S.W.2d at 526. Like in

Dolphin, Ballmer fails to support Appellant's proposition that liability coverage is mandatory for *passengers* of a vehicle and, contrary to Appellant's assertion, Ballmer does not at all conflict with the statement of law in Marchand that the MVFRL only applies to owners and *operators* of a motor vehicle. Instead, this Court has specifically affirmed the issue at the heart of this matter – that uninsured motorist coverage is not required for occupants of motor vehicles. Hines v. Government Employees Insurance Company, 656 S.W.2d 262 (Mo. banc 1983) ("The law does not even require that policies provide uninsured motorist coverage for occupants.")

Finally, Appellant suggests that Marchand should be disregarded because "the statute [Mo. Rev. Stat. § 303.190] itself disagrees." Then, Appellant partially quotes the statute as requiring that owner's policies "shall insure the person named therein and any other person…." Appellant's Substitute Brief at 15 (emphasis supplied by Appellant). To more fully quote the statute, Mo. Rev. Stat. § 303.190.2(2) only requires coverage for those persons named in the policy "and any other person using any such motor vehicle." Nonetheless, as discussed above, the statute has consistently been interpreted over the past several decades as only applying to those persons exercising control over the vehicle – not passengers. Appellant's attempt to parse the language of the statute and to suggest that it conflicts with the longstanding principle that liability insurance is not required for passengers is simply without any support in law.

In short, the legislature has enacted legislation – Mo. Rev. Stat. § 379.203 – specific to the mandate of uninsured motorist coverage. The statute requires that every

automobile liability insurance policy contain uninsured motorist coverage. The Shelter policy issued to Bright Start Academy did, in fact, provide uninsured motorist coverage to those persons insured thereunder. Thus, the policy satisfied Missouri's uninsured motorist statute. However, by the terms of the coverage, passengers such as Justin Steele are not insureds for purposes of uninsured motorist coverage. Missouri's uninsured motorist statute simply does not require that uninsured motorist coverage be provided to all occupants of a motor vehicle, and Appellant cites to no authority whatsoever to support her contention that uninsured motorist coverage extends to passengers. Instead, the Supreme Court of Missouri, the Court of Appeals for the Western District of Missouri, and the Court of Appeals for the Eastern District of Missouri have held contrary to Appellant's assertion. See, e.g., Hines; Byers; Marchand.

Further, Appellant cites to absolutely no authority that supports her proposition that the MVFRL requires that liability coverage be extended to passengers of a motor vehicle. Conversely, Shelter has cited case law spanning several decades, holding that § 303.190.2(2) does not extend to passengers and, instead, simply applies to owners and operators of motor vehicles. See, e.g., Waltz; Reaves; Francis-Newell; Carney; Marchand. Simply stated, Appellant proposes that this Court reverse legal precedent that has stood for nearly 40 years.

CONCLUSION

For the foregoing reasons, Respondent Shelter Mutual Insurance Company respectfully requests that the trial court's entry of summary judgment in its favor be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that Respondent's Substitute Brief was filed electronically with the Clerk of the Court this 18th day of September, 2012, to be served by operation of the Court's electronic filing system upon the following or U.S. mail for parties not registered with CM/ECF:

Mr. David C. Knieriem
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St. Louis, Missouri 63105

/s/ Michael S. Hamlin

CERTIFICATE OF COMPLIANCE

Respondent's Substitute Brief includes the information required by Rule 55.03, complies with the requirements of Rule 84.06(b), and contains 5,648 words. It was prepared using Microsoft Word 2010.

/s/ Michael S. Hamlin